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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/755,985	01/13/2004	Brian Blischak	02-036US	2245

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EXAMINER

MCCORKLE, MELISSA A

ART UNIT PAPER NUMBER

3763

DATE MAILED: 05/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/755,985	Applicant(s) BLISCHAK, BRIAN	
	Examiner Melissa A. McCorkle	Art Unit 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 1-17 and 33-48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/13/04 & 2/17/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 30-31 are objected to because of the following informalities: The claims have no antecedent basis in claim 26; however, it appears that perhaps the intention was to have these claims depend from claim 27, since there is antecedent basis in that claim for the limitations. Appropriate correction is required.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 18-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Borsanyi (5,053,031). Borsanyi discloses a method comprising manually applying pressure to a working fluid container in an actuator associated with an implantable pharmaceutical fluid delivery device, wherein the implantable pharmaceutical fluid delivery device comprises a first fluid reservoir and a second fluid reservoir, thereby causing a flow of the working fluid into the first fluid reservoir; delivery to the treatment area a first dosage of pharmaceutical fluid from a constant flow pump as the first dosage is delivered, the constant flow pump associated with the implantable pharmaceutical delivery device; wherein the constant flow pump does not comprise an electrical motor or electrical power supply; or wherein the first dosage is a bolus dosage; or further comprising drawing working fluid from the first fluid reservoir into the

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actuator, wherein said drawing causes a filling of the second fluid reservoir with pharmaceutical fluid; or wherein the first dosage is a supplemental flow dosage, wherein the delivering to the treatment area a first dosage comprises drawing the working fluid into the actuator from the first fluid reservoir thereby causing pharmaceutical fluid to be expelled from the second fluid reservoir; or wherein the first and second fluid reservoirs are piston and cylinder devices; or wherein the actuator is selected from the group consisting of a compressible button and a bulb, wherein the dosage is a bolus dosage, or a supplemental flow dosage, or wherein selecting a resistance does not comprise an electric motor or an electric power supply [column 4 lines 51-column 7 lines 67].

Borsanyi discloses a method comprising determining a rate and volume of a dosage associated with a prescription to be delivered by an implantable drug delivery device, the delivery device comprising an actuator; selecting a volume of fluid to be moved by the actuator, selecting a resistance associated with a flow path of the fluid, and implementing in the system the volume and resistance such that the determined dosage rate and volume of the dosage are produced; wherein selecting a resistance comprises selecting a flow restrictor with a determined restriction; or wherein selecting a resistance comprises selection a viscosity of the fluid [column 4 lines 51-column 7 lines 67].

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Stephen et al (4,405,305) discloses a subcutaneous peritoneal injection catheter; Glantz (5,387,192) discloses a hybrid portal and method.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa A. McCorkle whose telephone number is (571) 272-2773. The examiner can normally be reached on Monday - Friday, 9am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



NICHOLAS D. LUCCHESI
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Melissa A McCorkle
Examiner
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